

PROCEDURAL SAFEGUARDS STATEMENT

A. PARENTAL PARTICIPATION

As the parent of a child who has or may have a disability, you are entitled to participate in meetings regarding your child's eligibility determination, initial evaluation or reevaluation, educational placement or provision of a free appropriate public education.

B. PRIOR NOTICE TO PARENTS

Your school district must provide you with a written notice at least seven days prior to the date the school proposes or refuses to initiate or change the identification, evaluation, educational program, placement or the provision of a free appropriate public education to your child.

If the school is also required to have your written permission (consent) for an action, the school may provide this notice to you at the same time it requests your consent.

The notice must include:

A description of the action proposed or refused by the school, an explanation of why the school proposes or refuses to take the action, and a description of any options the school considered and the reasons why those options were rejected;

A description of each evaluation procedure, test, record, or report the school uses as a basis for the proposal or refusal;

A description of any other factors which are relevant to the school's proposal or refusal; and

A statement that you have the rights contained within this notice and where you may obtain a copy of this notice.

Sources you may contact for assistance in understanding your rights include the Maine Parent Federation (1-800-870-7746) and Southern Maine Parent Awareness (1-800-564-9696).

You may file a complaint with the Maine Department of Education if you believe the school has violated a requirement under the Maine Special Education Regulations. (*see* Department of Education Complaints in §H. below)

The notice must be written in language understandable to the general public. The notice must be provided in your native language or other mode of communication, unless it is clearly not feasible to do so. If your native language or other mode of communication is not a written language, your school must take steps to insure that the notice is translated orally or by other means to you in your native language or other mode of communication, that you understand the content of the notice, and that there is written evidence that these requirements have been met.

C. PARENT CONSENT

Your school must obtain your written permission (consent) before conducting an initial evaluation, before an initial placement of your child in a program providing special education and supportive services or before conducting any new

test as part of a reevaluation of your child. Except for initial evaluation, reevaluation and initial placement, your permission may not be required as a condition for providing any special education or supportive services to you or your child. Consent for initial evaluation may not be construed as consent for initial placement.

If you refuse to provide your permission (consent) for an initial evaluation, your school may use the due process hearing or mediation procedures to determine whether your child may be evaluated without your consent. If the hearing officer orders the school to evaluate your child or if you and the school reach a mediated agreement, the school may evaluate your child.

Generally, either parent may grant consent. In the case of divorced parents with joint custody either parent may grant consent. However, in the event that one parent grants consent and the other parent refuses, then the school is obligated to initiate the action for which consent has been granted.

D. EVALUATION / REEVALUATION

The Pupil Evaluation Team (P.E.T.), of which you are a member, may decide that no additional information is needed to determine your child's initial or continuing eligibility for special education. If you disagree with the team's decision, you may request that the school conduct an assessment of your child. If your child has a disability and has been receiving special education services, the school district must evaluate your child before determining that your child no longer requires special education services.

E. PARENTAL CONSENT FOR REEVALUATION

The school must obtain your written consent before conducting a reevaluation of your child. However, if the school can show that it tried to get your consent for the reevaluation of your child and you did not respond then the school may reevaluate your child without your consent. Your consent is not required to review existing evaluation information.

F. INDEPENDENT EDUCATIONAL EVALUATION

An independent evaluation is an evaluation conducted by a qualified person who is not an employee of the school. You have the right to an independent educational evaluation at no cost to you if you disagree with an evaluation obtained by your school. However, your school may initiate a due process hearing to show that its evaluation is appropriate. If the hearing decision is that the school's evaluation is appropriate, you still have the right to an independent educational evaluation, but at your expense. If you obtain an independent educational evaluation at your expense, the results of the evaluation must be considered by your school in any decision made with respect to the provision of a free appropriate public education to your child, and may be presented as evidence at a due process hearing regarding your child.

If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.

Your school shall provide you, when you request it, information about where an independent educational evaluation may be obtained.

If an independent evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, are the same as the criteria that the school uses when it initiates an evaluation, to the extent those criteria are consistent with your (the parent's) right to an independent evaluation. A school may not impose any additional criteria regarding an independent educational evaluation.

G. SUPERINTENDENT COMPLAINTS

You have the right to file a written complaint with the superintendent of the administrative unit responsible for the education of your son or daughter if you have reason to believe that the administrative unit is not in compliance with these special education regulations. The superintendent, or a designee, shall then appoint a person to investigate your complaint and to recommend to the superintendent, within 30 days of the receipt of the written complaint, any corrective action necessary to resolve your complaint.

H. DEPARTMENT OF EDUCATION COMPLAINTS

You have the right to file a signed, written complaint with the Commissioner of the Department of Education if you have reason to believe that the administrative unit responsible for the education of your son or daughter is not in compliance with these special education regulations or if you disagree with the results of a superintendent's complaint investigation.

The Department shall initiate and complete, within 60 days of the receipt of the written complaint, an investigation and a determination of whether your school has complied with these special education regulations.

If your school is determined to be in non-compliance, the Department will develop a corrective action plan to resolve the complaint.

I. MEDIATION

You or the school have the right to request the Department of Education to provide mediation services if you and the school are unable to agree upon the identification, evaluation, educational program, placement or the provision of a free, appropriate public education of your son or daughter.

The mediation must be voluntary on the part of both you and the school district. Mediation may not be used to delay or deny your right to a due process hearing. The mediation must be conducted by a qualified and impartial mediator at no cost to you or the school district. The Department of Education maintains a list of qualified mediators available to be assigned when you and the school request the use of mediation. The mediation will be held in a timely manner and at a location that is convenient to you and the school. Any agreement reached in mediation will be put into writing and becomes a part of your child's I.E.P. If the school fails to implement the mediation agreement you may initiate a hearing or file a complaint against the school. Mediation discussions are confidential and may not be used as

evidence in a hearing. You and the school may be required to sign a confidentiality pledge prior to the start of the mediation.

If you chose not to participate in a mediation, the Maine Department of Education may require you to meet with a third party who will explain the benefits of the mediation process to you. If you would like to request a mediation or would like more information about mediation, you may contact the Maine Department of Education, Special Services Team at 624-6650.

J. IMPARTIAL DUE PROCESS HEARING

You or your school may initiate a hearing regarding the school's proposal or refusal to initiate or change the identification, evaluation, or educational placement of your child or the provision of a free appropriate public education to your child.

You must send your written request for a due process hearing to the Maine Department of Education. The request must contain the name of the child, the child's residence, the school the child is attending, a description of the problem and facts relating to the problem, and a proposed solution to the problem.

A form is available from the Maine Department of Education, your local school, or the Maine Parent Federation. Failure to provide the required information may result in a reduction of the award of any attorney fees if you win your case.

The hearing will be conducted by an impartial hearing officer appointed by the Department and contracted to provide hearing officer services.

The Department must inform you of any free or low-cost legal and other relevant services available in the area if you request the information or if you or your school initiate a due process hearing.

A hearing may not be conducted by a person who is an employee of a public agency which is involved in the education or care of your child, or by any person having a personal or professional interest which would conflict with his or her objectivity in the hearing. (A person who otherwise qualifies to conduct a hearing is not an employee of the Department solely because he or she is paid by the Department of Education to serve as a hearing officer.)

The Department maintains a list of the persons who serve as hearing officers. The list includes a statement of the qualifications of each of those persons.

At least five business days prior to a hearing, you and any parties to the hearing shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing. If any party has failed to comply with this requirement, the hearing officer may bar you or any other party from introducing the relevant evaluation or recommendations at the hearing without the consent of the other party.

The Department shall ensure that a final hearing decision is reached and mailed to the parents and the school within 45 days after the receipt of a request for a hearing, unless the hearing officer grants a specific extension at the request of either party.

You have a right to receive, at your request, an electronic copy of the findings of fact and decisions of the hearing officer.

The decision made in a due process hearing is final, unless you or the school brings a civil action under the procedures described below.

K. DUE PROCESS HEARING RIGHTS

Any party to a hearing has the right to:

1. Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of students with disabilities;
2. Present evidence and confront, cross-examine, and compel the attendance of witnesses;
3. Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;
4. Obtain a written or electronic verbatim record of the hearing; and
5. Obtain written findings of fact and decisions. (After deleting any personally identifiable information, the Department shall transmit those findings and decisions to the State advisory panel and make them available to the public.)

As the parent, you have the following additional rights:

You may have your child present at the hearing;

You may open the hearing to the public; and

You may obtain the findings of fact, decision and record of the hearing at no cost to you.

Each hearing must be conducted at a time and place which is reasonably convenient to you and your child.

L. CIVIL ACTION

Any party aggrieved by the findings and decision made as the result of a due process hearing has the right to bring a civil action with respect to the complaint presented at the hearing. The action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. The court will receive the records of the due process hearing and may hear additional evidence at the request of either party. Basing its decision on the preponderance of evidence, the court will grant whatever relief it determines to be appropriate. Nothing in this section restricts or limits the rights, procedures and remedies available under the Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that you must first exhaust the procedures available to you through the special education due process system and subsequent civil actions before filing a civil action under these

laws seeking relief that is also available through those procedures.

If you have any questions regarding these requirements, they should be directed to David Stockford, Director of the Special Services Team, or to the Special Education Due Process Office at 624-6650.

M. CHILD'S STATUS DURING DUE PROCESS PROCEEDINGS

During the pendency of any complaint investigation, mediation, or due process hearing or appeal of a hearing, unless you and your school agree otherwise, your child must remain in his or her present educational placement and program.

If the hearing involves an application for initial admission to public school, your child, with your consent, must be placed in the public school program until the completion of all the proceedings.

N. AWARD OF ATTORNEYS' FEES

You may request either a state or federal court to award reasonable attorney fees and costs if you win your hearing either through a settlement or a hearing decision. Reasonable attorney fees incurred by you related to a special education hearing shall be the responsibility of the administrative unit when you prevail in the special education hearing and when ordered by a court of appropriate jurisdiction, or when attorney's fees have been agreed to as part of an out-of-court settlement.

Attorney fees may not be awarded relating to any meeting of the Pupil Evaluation Team unless the meeting occurs as a result of an order of a hearing officer or a judge. Attorney fees may not be awarded for a mediation.

The award of attorney fees may be reduced if you unreasonably delayed the settlement or decision in the case, the time spent and services furnished were excessive or the fees charged by your attorney exceed reasonable rates.

O. SURROGATE PARENTS

Each school shall ensure that an individual is assigned to act as a surrogate for the parents of a child when no parent can be identified, the school, after reasonable efforts, cannot discover the whereabouts of a parent, or the child is a ward of the State. The Department must have a method for determining whether a child needs a surrogate parent, and for assigning a surrogate parent to the child.

The Department may select a surrogate parent in any way permitted under State law, but must ensure that a person selected as a surrogate is not an employee of an agency which is involved in the education or care of the child, has no interest that conflicts with the interest of the child he or she represents, and has knowledge and skills that ensure adequate representation of the child. (An individual is not disqualified as an agency employee from appointment as a surrogate solely

because he or she is paid by the Department to serve as a surrogate parent.)

The surrogate parent may represent the child in all matters relating to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to the child.

P. TRANSFER OF RIGHTS

In general, when your child reaches age 18 (or has been emancipated), these procedural safeguards will transfer to your child. A court may appoint a legal guardian for your child if your child has been determined, consistent with state procedures, to be unable to provide informed consent.

At least one year before your child turns 18, the school district will inform your child of the rights, if any, that will be transferred to your child. The school will inform both you and your child when these rights are transferred to your child.

As the parent of an adult child with a disability, both you and your child will continue to receive notice of P.E.T. meetings, prior written notice and the notice of procedural safeguards.

Q. DISCIPLINARY PROCEDURES

If your child has violated the school's disciplinary standards, the school may remove your child from his or her current educational setting for not more than 10 consecutive school days or 10 days cumulatively within a school year, to the extent removal would be applied to students without disabilities.

After a child with a disability has been removed from his or her current placement for more than 10 school days in the same school year, during any subsequent days of removal the public agency must provide services to the extent necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's I.E.P.

Your son or daughter may be placed in an appropriate interim alternative education program, as determined by a PET, for not more than 45 days if he or she knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance or carries a weapon while at school or a school function under the jurisdiction of the State or any local school.

If the school district wants to change your child's placement for more than 10 school days, you have the right to participate in the manifestation determination meeting. This meeting determines whether the behavior was or was not related to your child's disability.

If your school did not conduct a functional behavioral assessment and implement a behavioral intervention plan for your son or daughter before the behavior that resulted in the removal for disciplinary purposes, the school must convene a PET meeting to develop an assessment plan. As soon as practical after the assessment, the PET must meet to develop appropriate behavioral interventions to address that behavior and implement those interventions. If your son or daughter

already has a behavioral intervention plan in place, the PET must meet to review the plan and its implementation, and modify the plan and its implementation as necessary, to address the behavior.

If the determination is made that the behavior is related to your child's disability then your child may not be suspended, expelled or removed from his or her current educational placement for more than ten school days (except in the case of weapons or drugs) unless the Pupil Evaluation Team develops a new I.E.P. and decides upon a new placement. If it is determined that the behavior was not a manifestation of your son or daughter's disability and disciplinary measures will be applied as they would be to any other student, then your school must make sure that the special education and disciplinary records of your son or daughter are given to the person or persons making the final disciplinary decision, so that this information can be taken into account in reaching a decision. During any removal in excess of 10 days, the school district shall provide your child with special education and supportive services to the extent necessary to enable your child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in your child's I.E.P.

If you disagree with the manifestation determination, you have a right to request an expedited due process hearing to review the PET determination. The hearing officer will review all the records of the meeting to determine whether your school has demonstrated that your son or daughter's behavior was not a manifestation of his or her disability.

If your son or daughter is not already identified as a student with a disability, but either you or school personnel had expressed concern to your director of special education that he or she might need special education and no determination had been made that he or she was not eligible, then your son or daughter may have the same protections around discipline as if he or she had been determined to be a student with a disability. If a request is made for an evaluation during the time your son or daughter is subjected to disciplinary action, the evaluation must be conducted in an expedited manner. Until the evaluation is complete, your son or daughter will remain in the educational placement determined by school authorities, which can include suspension or expulsion without educational services. If your son or daughter is subsequently identified as a student with a disability, taking into account information from the evaluation as well as information provided by you, then your school must provide him or her with special education and supportive services in accordance with all of the special education law and regulations.

Nothing relating to the rights of parents and students during disciplinary proceedings prohibits the school from reporting a crime committed by a student with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by

a student with a disability. The school may send copies of the special education and disciplinary records of the student with a disability for consideration by the appropriate authorities to whom it reports the crime. The school may only send records to the extent that this is permitted by the Family Education Rights and Privacy Act and in accordance with state law.

R. CHILD’S PLACEMENT DURING THE PENDENCY OF DUE PROCESS PROCEUDRES – DISCIPLINARY ACTION

Generally, if you initiate a due process hearing, your child will remain in his or her current educational placement until a final decision has been reached or you and the school agree upon another placement. However, in cases where your child has been placed in an interim alternative education setting because of a disciplinary action, your child may remain in the interim alternative education setting for a period not to exceed 10 days (or 45 days if a weapon or drug related offence). Thereafter, your child will return to the previously agreed upon educational placement unless either a hearing officer orders another placement or you and the school agree to another placement.

S. PRIVATE SCHOOL PLACEMENTS BY PARENTS

The school district may be required to reimburse the costs of a private school placement if you can prove at a due process hearing that the school district has failed or is unable to provide your child with a free appropriate public education and that the private placement is appropriate.

If you plan to place your child with a disability in a private school and seek reimbursement from the school district, you must inform the school district at a Pupil Evaluation Team meeting or provide the school district with written notice at least 10 business days (excluding weekends) prior to the enrollment of your child in the private school. You must inform the school about your disagreement with the school’s I.E.P., the placement proposed by the school, your intention to enroll your child in a private school and your intention to request reimbursement.

If the school has provided you with a written notice that the school intends to evaluate your child before you remove your child from the public school, you must make your child available to the school for evaluation.

A court or hearing officer could decide to reduce or deny reimbursement for your private school placement if you fail to inform the school of your intention to make a private school placement at public expense, fail to make your child available for evaluation, or take other unreasonable actions. The cost of reimbursement for a unilateral placement may not be reduced or denied for failure to provide notice to your school if: (a.) You are illiterate and cannot write in English; (b.) Providing notice would likely result in physical or serious emotional harm to your child; (c.) The school prevented you from providing notice; or (d.) You had not received notice that you are required to notify the school if you plan to make a unilateral placement of your child in a private school.

T. ACCESS TO RECORDS

Your school must permit you to inspect and review all education records relating to your child with respect to the identification, evaluation, and educational placement of your child, and the provision of a free appropriate public education to your child, which are collected, maintained, or used by the school. The school must comply with a request without unnecessary delay and before any meeting regarding an individualized education program or hearing relating to the identification, evaluation, placement or provision of appropriate services to your child, and in no case more than 45 days after the request has been made.

Your right to inspect and review education records under this section includes:

- A. The right to a response from the participating school to reasonable requests for explanations and interpretations of the records;
- B. Your right to have your representative inspect and review the records; and
- C. Your right to request that the school provide copies of the records containing the information if failure to provide those copies would effectively prevent you from exercising your right to inspect and review the records.

The school may presume that you have authority to inspect and review records relating to your child unless the school has been advised that you do not have the authority under applicable Maine law governing such matters as guardianship, separation, and divorce.

The school must keep a record of who (other than authorized employees of the school and the parent) has had access to your child’s records, including the person’s name, date, and purpose for the access.

If any education record includes information on more than one child, you have the right to inspect and review only the information relating to your child or to be informed of that specific information.

The school must provide you on request a list of the types and locations of education records collected, maintained, or used by the school.

U. FEES FOR SEARCHING, RETRIEVING, AND COPYING RECORDS

The school may not charge a fee to search for or to retrieve information under this section, but may charge you a fee for copies of records which are made for you under this rule if the fee does not effectively prevent you from exercising your right to inspect and review those records.

V. RECORD OF ACCESS

The school must keep a record of parties obtaining access to education records collected, maintained, or used under these

rules (except access by parents and authorized employees of the participating school), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

W. AMENDMENT OF RECORDS AT PARENT’S REQUEST

If you believe that information in education records collected, maintained, or used under these rules is inaccurate or misleading or violates the privacy or other rights of your child, you may request the school that maintains the information to amend the information.

The school must decide whether to amend the information in accordance with your request within a reasonable period of time of receipt of the request. If the school decides to refuse to amend the information in accordance with the request, it must inform you of the refusal and of your right to a hearing as set forth below.

The school shall, on request, provide an opportunity for a hearing to challenge information in education records to insure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child.

If, as a result of the hearing, the school decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child, it must amend the information accordingly and so inform you in writing.

If, as a result of the hearing, the school decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child, it must inform you of the right to place in the records it maintains on your child a statement commenting on the information or setting forth any reasons you disagree with the decision of the school. Any explanation placed in your child's records under this section must be maintained by the school as part of the records of your child as long as the record or contested portion is maintained by the school; if the records of your child or the contested portion is disclosed by the school to any party, the explanation must also be disclosed to the party.

X. DEFINITIONS

"Consent" means that: (a) You have been fully informed of all information relevant to the activity for which consent is sought, in your native language or other mode of communication; (b) You understand and agree in writing to the carrying out of the activity for which your consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and you understand that the granting of consent is voluntary on your part and may be revoked at any time.

"Evaluation" means procedures used in accordance with these rules to determine whether a child has a disability and the nature and extent of the special education and supportive services that the child needs. The term means procedures used selectively with an individual child and does not include basic tests

administered to or procedures used with all students in a school, grade, or class.

"Independent educational evaluation" means an evaluation conducted by a qualified examiner who is not employed by the school responsible for the education of the child in question. "Independent educational evaluation at public expense" means that the school either pays for the full cost of the evaluation or insures that the evaluation is otherwise provided at no cost to you.